

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COWAN DRIVE REALTY, LLC,

Plaintiff,

V.

LAND TECH GENERAL CONTRACTORS, INC.,
 ROWEAN EXCAVATING CONTRACTORS, INC.,
 NES RENTALS, MURRAY PAVING &
 RECLAMATION, INC., and UNITED STATES OF
 AMERICA,

Defendants.

Case No. 10-cv-11537

Hon. Rya W. Zobel

JOINT STATEMENT PURSUANT TO D. MASS. LOCAL RULE 16.1(d) AND FED. R. CIV. P. 26(f)

Pursuant to Local Rule 16.1(d), Rule 26(f) of the Federal Rules of Civil Procedure, and this Court's NOTICE OF SCHEDULING CONFERENCE of September 30, 2010, the parties to this action jointly submit the following statement. The parties will file separate certifications as required by Local Rule 16.1(d)(3).

Pursuant to discussions at the Rule 26(f) conference, detailed below, the parties intend to file an Assented-to Motion to stay the instant action pending the disposition of two imminent trials in the Superior Court in Middlesex and Plymouth Counties, as the claims of several parties in the instant action are contingent on the outcomes of those trials. Further, the parties submit as follows:

1. Matters Discussed by Parties: During telephone conferences on October 14, 2010, counsel for plaintiff Cowan Drive Realty, LLC, and defendants Land Tech General Contractors,

Inc., R. P. Rowean Excavating Contractors, Inc., NES Rentals, Murray Paving & Reclamation, Inc., and the United States of America discussed the following issues:

- a. Two cases still pending in the Superior Courts of Plymouth and Middlesex Counties, each involving claims of defendants Rowean and Land Tech against each other;
- b. The United States' interest in intervening in those actions to preserve its federal tax lien claim in any adjudication of the taxpayer Rowean's rights to property;
- c. Counsel's belief that the expedited trial schedules in those actions, which involve simple construction disputes, should result in the disposition of each actions within the next few months;
- d. Plaintiff Cowan's wish to be dismissed from the instant action, and the parties' assent thereto, as no party to the instant action has a claim against Cowan except to the extent of the funds already interpled.

2. Procedural Motion and other Pending Matters. Prior to the removal of this action before the District Court, a Motion for Discharge of Mechanic's Lien was pending in the Plymouth Superior Court. That motion has since been refiled in a related state-court case, *Rowean Excavating Contractors, Inc. v. Land Tech General Contractors, et al.*, Plymouth Superior Court, Docket No.: PLCV2010-0249-E. That motion was allowed on October 13, 2010.

3. Schedule for Discovery. The parties have agreed that discovery in the instant action should be stayed for a period of 6 months while the Plymouth and Middlesex actions proceed to trial.

Should any additional discovery be necessary in the instant action after the claims at issue in the Plymouth and Middlesex actions have been resolved, the parties will submit a proposed discovery plan in an amended joint statement to this Court.

In any event, the parties propose to submit dispositive motions in the instant action within sixty (60) days of the disposition of the latter of the Plymouth and Middlesex actions to reach a decision.

4. Settlement. There have been no settlement discussions at this time. Any discussion of settlement in the instant action would be premature prior to the disposition of the Plymouth and Middlesex actions.

5. Trial by Magistrate Judge. At this time, the parties have not agreed to consent to trial by a Magistrate Judge.

6. Budget and Alternative Dispute Resolution. Counsel for the parties have conferred with their respective clients concerning establishing a budget for litigation and the use of alternative dispute resolution. At this time, any mediation or alternative dispute resolution would be premature, as the positions of several of the parties will depend to a large extent on the outcomes of the Plymouth and Middlesex actions. The parties will separately file the certifications required pursuant to Local Rule 16.1(d)(3).

Respectfully Submitted,

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